

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

MATTHEW BOLSHIN, D.P.M. and IRINA KHMELNIK, a married couple
Plaintiffs.

ELATE MOVING NETWORK LLC,
Defendant.

Case No.: 2:24-cv-00363-MJP

THE PARTIES AGREEMENT REGARDING DISCOVERY OF ELECTRONICALLY STORED INFORMATION AND ORDER

The parties here stipulate to the following provisions regarding the discovery of electronically store information (“ESI”) in this matter:

A. General Principles

1. An attorneys' zealous representation of a client is not compromised by conducting discovery in a cooperative manner. Counsel or the parties' failure to cooperate in facilitating and reasonably limiting discovery requests and responses raises litigation costs and contributes to the risk of sanctions.

2. As provided in LCR 26(f), the proportionality standard in Fed. R. Civ. P. 26(b)(1) must be applied in each case when formulating a discovery plan. To further the application of the proportionality standard in discovery, requests for production of ESI and related responses should be reasonably targeted, clear, and as specific as possible. This agreement is intended to assist the parties in identifying relevant, responsive information that has been stored electronically and is proportional to the needs of the case. The agreement does not supplant the parties' obligations to

1 comply with Fed. R. Civ. P. 34.

2 **B. ESI Disclosures**

3 Within 30 days of entry of this Order, or a later time if agreed by the parties, each party
4 shall disclose:

5 1. Custodians. The custodians most likely to have discoverable ESI in their possession,
6 custody or control. The parties will identify the custodians by name, title, connection to the instant
7 litigation, and the type of the information under the custodian's control.

8 2. Non-custodial Data Sources. A list of non-custodial data sources (*e.g.*, shared drives,
9 servers), if any, likely to contain discoverable ESI.

10 3. Third-Party Data Sources. A list of third-party data sources, if any, likely to contain
11 discoverable ESI (*e.g.* third-party email providers, mobile device providers, cloud storage) and,
12 for each such source, the extent to which a party is (or is not) able to preserve information stored
13 in the third-party data source.

14 4. Inaccessible Data. A list of data sources, if any, likely to contain discoverable ESI (by
15 type, date, custodian, electronic system or other criteria sufficient to specifically identify the data
16 source) that a party asserts are not reasonably accessible under Fed. R. Civ. P. 26(b)(2)(B).

17 **C. ESI Discovery Procedures**

18 1. On-site inspection of electronic media. The parties will not require an on-site inspection
19 unless a party can demonstrate a specific need and good cause, or if the parties agree.

20 2. Search methods. The parties shall timely confer to attempt to reach agreement on
21 appropriate search terms and queries, file type and date restrictions, data sources (including
22 custodians), and other appropriate computer- or technology-aided methodologies, before any such
23 efforts is undertaken. The parties shall continue to cooperate in revising the appropriateness of the
24 search methodologies.

25 a. Prior to running searches:

26 i. The producing party shall disclose the data sources (including

1 custodians), search terms and queries, any file type and data restrictions, and any other
 2 methodology that it proposes to use to locate ESI likely to contain responsive and discoverable
 3 information. The producing party may provide unique hit counts for each search query.

4 ii. After disclosure, the parties will meet and confer about the additional
 5 terms sought non-producing party is seeking.

6 iii. The following provisions apply to the requesting party's search
 7 term/queries. The requesting party will employ focused terms and queries; and will do their best
 8 to avoid broad terms or queries, such as product and company names. A conjunctive combination
 9 of multiple words or phrases (*e.g.* "computer" and "system") narrows the search and shall count
 10 as a single search term. A disjunctive combination of multiple words or phrases (*e.g.* "computer"
 11 or "system") broadens the search, and thus each word or phrase shall count as a separate search
 12 term unless they are variants of the same word. The producing party may identify each search term
 13 or query returning overbroad results demonstrating the overbroad results and a counter proposal
 14 correcting the overbroad search or query.

15 3. Format.

16 a. ESI will be produced to the requesting party with searchable text, in a format to
 17 be decided between the parties. Acceptable formats include, but are not limited to, native files,
 18 multi-page TIFFs (with a companion OCR or extracted text file) , single-page TIFFs (only with
 19 load files for e-discovery software that includes metadata fields identifying natural document
 20 breaks and also includes companion OCR and/or extracted text files), and searchable PDF.

21 b. Unless the parties otherwise agree, files that are not easily converted to image
 22 format, such as spreadsheets, databases, and drawing files, will be produced in native format.

23 c. Each document image file shall be named with a unique number (Bates
 24 Number). File names should not be more than twenty characters long or contain spaces. When a
 25 text-searchable image file is produced, the producing party must preserve the integrity of the
 26 underlying ESI, *i.e.*, the original formatting, the metadata (as noted below) and, where applicable,

1 the revision history.

2 d. If a document is more than one page, the unitization of the document and any
3 attachments and/or affixed notes shall be maintained as they existed in the original document.

4 4. De-duplication. The parties may de-duplicate their ESI production across custodial and
5 non-custodial data sources after disclosure to the requesting party, and the duplicate custodian
6 information removed during the de-duplication process tracked in a duplicate/other custodian field
7 in the database load file.

8 5. Email Threading. The parties may use analytics technology to identify email threads
9 and need only produce the unique most inclusive copy and related family members and may
10 exclude less inclusive copies. Upon reasonable request, the producing party will produce a less
11 inclusive copy.

12 6. Metadata fields. If the requesting party seeks metadata, the parties agree that only the
13 following metadata fields need be produced, and only to the extent it is reasonably accessible and
14 non-privileged: document type; custodian and duplicate custodians (or storage location if no
15 custodian); author/from; recipient/to, cc and bcc; title/subject; email subject; file name; file size;
16 file extension; original file path; date and time created; sent, modified and/or received; and hash
17 value. The list of metadata type is intended to be flexible, and the parties may agree to change it,
18 particularly in light of advances and changes in technology, vendor, and business practices.

19 **D. Preserving ESI**

20 The parties acknowledge that they have a common law obligation, as expressed in Fed.
21 R. Civ. P. 37(e), to take reasonable and proportional steps to preserve discoverable information in
22 the party's possession, custody, or control. With respect to preserving ESI, the parties agree as
23 follows:

24 1. Absent the requesting party demonstrating good cause, the parties will not be required
25 to modify their ordinary business procedures to back-up and archive data; provided, however, that
26 the parties shall preserve all discoverable ESI in their possession, custody, or control.

1 2. The parties will supplement their disclosures per Fed. R. Civ. P. 26(e) with discoverable
2 ESI responsive to a particular discovery request or mandatory disclosure where that data is created
3 after a disclosure or response is made (unless excluded under Sections (D)(3) or (E)(1)-(2)).

4 3. Absent the requesting party demonstrating good cause, the following categories of ESI
5 need not be preserved:

6 a. Deleted, slack, fragmented, or other data only accessible by forensics.
7 b. Random access memory (RAM). Temporary files, or other ephemeral data that
8 are difficult to preserve without disabling the operating system.

9 c. On-line access data such temporary internet files, history, cache, cookies, and
10 the like.

11 d. Data in metadata fields that are frequently updated automatically, such as last
12 opened dates (See also Section (E)(5)).

13 e. Back-up data that are duplicative of data that are more accessible elsewhere.

14 f. Server, system, or network logs.

15 g. Data remaining from systems no longer in use that is unintelligible on the
16 systems in use.

17 h. Electronic data (*e.g.* email, calendars, contact data, and notes) sent to or from
18 mobile devices (*e.g.* iPhone, iPad, Android devices), provided that a copy of all such electronic
19 data is automatically saved in real time elsewhere (such as on a server, laptop, desktop computer,
20 or “cloud” storage).

21 **E. Privilege**

22 1. A producing party will create a privilege log of all documents fully withheld from
23 production based on privilege or protection, unless otherwise agreed or excepted by this
24 Agreement and Order. Privilege logs shall include a unique identification number for each
25 document and the basis for the claim (attorney-privileged or work-product protection). For ESI,
26 the privilege log may be generated using available metadata, including author/recipient or

1 to/from/cc/bcc names; the subject matter or title; and date created. Should the available metadata
2 provide insufficient information to evaluate the privilege claim asserted, the producing party will
3 include such additional information as required by the Federal Rules of Civil Procedure. Privilege
4 logs will be produced to all other parties no later than 30 days after delivering a production unless
5 the parties agree to an earlier deadline.

6 2. The parties do not need to log redactions if the basis for the redaction is clear on the
7 redacted document.

8 3. Parties do not have to include any privilege or work-product information generated
9 after the complaint was filed.

10 4. Activities undertaken to comply with the duty to preserve information are protected
11 from disclosure and discovery under Fed. R. Civ. P. 26(b)(3)(A) and (B).

12 5. Following Fed. R. Evid. 502(d), the producing party will not waive any applicable
13 privilege to any documents, ESI, or information produced whether inadvertent or otherwise, for
14 the purposes of this or any other federal or state proceeding, including the attorney-client privilege,
15 attorney work-product privilege, or any other privilege or protection recognized by law. This Order
16 will be interpreted to provide the maximum protection allowed by Fed. R. Evid. 502(d). The
17 provisions of Fed. R. Evid 502(b) do not apply. Nothing contained herein is intended to or will
18 serve to limit a parties' right to review documents, ESI, or information (including metadata) for
19 relevance, responsiveness and/or segregation of privileged and/or protected information before
20 production. Information produced in discovery that is protected as privileged or work product will
21 be immediately returned to the producing party.

22 DATED: 8/01/2024

23 **POSSINGER LAW GROUP, PLLC**

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Jeffrey Possinger, WSBA 30854

1 Ian Ducey, WSBA 59976
2 20250 144th Avenue NE, Suite 205
3 Woodinville, Washington 98702
4 (t) 206-512-8030
5 (f) 206-569-4792
6 (e) Jeffrey.possinger@possingerlaw.com
7 (e) Ian.ducey@possingerlaw.com
8 Attorneys for Plaintiff

9
10 **Lewis Brisbois Bisgaard & Smith LLP**

11 

12 Michael Jaeger, WSBA 23166
13 Joshua Dotson, WSBA 57921
14 1111 Third Avenue, Suite 2700
15 Seattle, WA 98101
16 (t) 206-876-2976
17 (f) 206-436-2030
18 (e) Michael.Jaeger@lewisbrisbois.com
19 (e) Joshua.Dotson@lewisbrisbois.com
20 Attorneys for Defendant

ORDER

Based on the foregoing, IT IS SO ORDERED.

DATED: August 1, 2024

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The Honorable Marsha Pechman
UNITED STATES DISTRICT COURT JUDGE